In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-863

MICHAEL LEO FIORELLA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 72-5278

EDDIE DAVID COX, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

1. These cases present the issue whether evidence collected through wire interceptions conducted under court orders issued on the basis of findings of probable cause and necessity, as required by Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. 2518, should be suppressed on the ground that although the Attorney General personally authorized the applications, he was not identified as the authorizing official in the

applications submitted to the district courts. The c
below ruled that suppression was not required. A r
issue involving the procedures followed within the D
ment of Justice in authorizing wiretap applicatio
before this Court in *United States* v. *Giordano*, No. 72-
certiorari granted March 26, 1973. As we pointed
our earlier memoranda in the present cases, howeve
precise issue here involved is different, since in *Gio*
the original application was authorized by the Att
General's Executive Assistant, acting on behalf
Attorney General, and the Fourth Circuit in *Gio*
ordered the evidence suppressed on the ground
authorization by the Executive Assistant, even wi
Attorney General's general approval, violates Title

At the time we filed our memoranda opposing cer
in the present cases, there was no conflict amon
circuits, since every circuit that had ruled on the
presented here—whether apparent identification
Assistant Attorney General as the officer who auth
the submission of a wiretap application, when in fa
authorization came from the Attorney General hi
vitiates the order—had agreed that such misidentifi
did not require suppression. The Ninth Circuit ha
held, however, in *United States* v. *Chavez*, No. 72
decided February 28, 1973, that a wiretap order
upon an application personally authorized by the At
General was invalid because the Assistant Attorne
eral in charge of the Criminal Division had be
roneously identified in the application as the perso
had authorized it. *Chavez*, in which we are filing
tion for a writ of certiorari, thus presents the sam
as the instant cases, and conflicts with the decisions

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[1]The Ninth Circuit has recently reached the same concl
United States v. *King* (Nos 72-1593 through 72-1602 and
decided February 28, 1973), and the government is seeking
in that case as well.

2. In our earlier memoranda in these cases, as well as in *Pisacano* v. *United States,* No. 71-1410, *Becker* v. *United States,* No. 72-158, and in our petition for certiorari in *Giordano* we have detailed the authorization procedures followed in the Department of Justice. The then standard procedure was followed in both of the present cases; all applications were personally authorized by the then Attorney General John N. Mitchell, but the letters notifying field attorneys that they were authorized to apply for wiretap orders were sent over the name of Assistant Attorney General Will Wilson and seemed to indicate, erroneously, that it was he who was authorizing the applications. Petitioners claim that that procedure did not comply with the requirements of 18 U.S.C. 2518(1)(a) and 2518(4)(d). The courts of appeals rejected these claims.

3. In light of the conflict that has now developed and in light of our filing of a petition for a writ of certiorari to review the conflicting decision of the Ninth Circuit in *Chavez,* we are withdrawing our opposition to the petitions in the instant cases on the issues set forth in our petition in *Chavez.*[2]

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1973.

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[2]We are furnishing copies of our petitions in *Chavez* and *Giordano* (to which the *Chavez* petition refers) to petitioners in these cases. For the reasons set forth in our original memoranda, we still oppose the granting of certiorari on the other issues raised by these petitioners.